

MISSOURI DEPARTMENT OF NATURAL RESOURCES
LAND RECLAMATION COMMISSION

TRANSCRIPT OF PROCEEDINGS
Pre-hearing Conference
November 20, 2007
Osage Beach, Missouri

MAGRUDER LIMESTONE CO., INC.)
Osage Beach Quarry, Miller)
County, Mo.,)
Applicant,)
)
LINDA WEEKS, et al.) Proceeding Under
Petitioners,) The Land
) Reclamation Act,
v.) Sections 444.760-
) 444.789. RSMo.
LARRY P. COEN,)
Staff Director,)
Land Reclamation Program,)
Division of Environmental)
Quality,)
Respondent.)

W.B. TICHENOR, Presiding,
HEARING OFFICER

REPORTED BY:

MINDY VISLAY, CCR
MIDWEST LITIGATION SERVICES

A P P E A R A N C E S

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BRIAN E. MCGOVERN, Attorney at Law
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FOR: Michael and Jacqueline Attkisson
and Larry and Vicky Stockman;
Petitioners.

P R O C E E D I N G S

HEARING OFFICER TICHENOR: Please come to order.

The Missouri Department of Natural Resources Land Reclamation Commission is convened in a pre-hearing conference in the matter of Magruder Limestone Company Inc., Osage Beach Quarry, Miller County, Missouri; Applicant, in a proceeding under the Land Reclamation Act, Sections 444.760 to 444.789 of the Revised Statutes of Missouri, Linda Weeks, et al.; Petitioners, versus Larry Coen; Staff Director, Land Reclamation Program, Division of Environmental Quality, Respondent.

This pre-hearing conference is being convened at 7:00 p.m., Tuesday, November 20th, at the City Hall of Osage Beach, Miller County, Missouri. W.B. Tichenor, the Hearing Officer assigned by the Land Reclamation Division, presiding.

All individuals will please turn off their cell phones at this time. You are to leave them off until this pre-hearing is adjourned. Off does not mean vibrate, it means off.

Parties, and those in attendance, are advised the pre-hearing conference will be conducted under the provisions of Supreme Court Operating Rule 11, which

1 reads for the purpose of this pre-hearing conference
2 as follows:

3 All persons, except those authorized by the
4 Hearing Officer to preserve the record, shall refrain
5 from broadcasting, televising, reporting or taking
6 photographs in the hearing room and in the corridors
7 and areas adjacent thereto while the pre-hearing
8 conference is in session and during any recesses.

9 This is Local Rule No. 11 in the 19th Judicial
10 Circuit, which is Cole County, where the Department of
11 Natural Resources and the Land Reclamation Commission
12 are legally domiciled. It is also Local Rule 11(4) of
13 the 26th Judicial Circuit, Miller County. Any
14 questions from the parties regarding this matter?

15 The purpose of this pre-hearing conference is to
16 address various procedural matters relating to the
17 holding of the formal public or evidentiary hearing.
18 It is to acquaint the parties with the overall process
19 of the evidentiary hearing, to set discovery and trial
20 preparation deadlines, and to establish the tentative
21 dates for holding the evidentiary hearing. There will
22 be an order issued the week of November 26 that will
23 memorialize the decisions made during this pre-hearing
24 conference.

25 The order of proceedings tonight will be as

1 follows:

2 Identification of the parties and attorneys and
3 establishing pro se parties. Review of the nature of
4 the evidentiary hearing. Review of the burdens of
5 proof for the evidentiary hearing. Addressing the
6 substantive issues, discovery issues, the timeline for
7 holding the evidentiary hearing, the procedure under
8 which the evidentiary hearing will be conducted, and
9 any other matters as attorneys or parties may wish to
10 raise.

11 During the course of the pre-hearing conference,
12 if any party wishes to address the Hearing Officer, if
13 you would please rise, the Hearing Officer will
14 recognize you. Parties represented by counsel should
15 only seek recognition through their attorney.
16 Spectators should not attempt to seek recognition,
17 since you are not parties to this action, and you will
18 not be recognized to address the Hearing Officer
19 during this proceeding. The Hearing Officer, at the
20 close of the pre-hearing conference, will consider
21 limited questions from members of the general public.

22 First off, I want to identify the parties present.
23 For the Applicant, Magruder Limestone Company, Inc.,
24 is present in the person of Mark Magruder and Dean
25 McDonald and is represented by its Attorney of Record;

1 Adam Troutwine. Correct?

2 MR. TROUTWINE: Correct.

3 HEARING OFFICER TICHENOR: The Respondent,
4 Larry Coen, is present in person and by his counsel,
5 his Attorney of Record, Don Willoh of the Attorney
6 General's Office.

7 MR. DUGGAN: That is incorrect.

8 HEARING OFFICER TICHENOR: I'm sorry, Tim.
9 I'm reading my script.

10 Tim Duggan, are you assigned for the duration of
11 this?

12 MR. DUGGAN: Yes, I am.

13 HEARING OFFICER TICHENOR: You are. All
14 right. I've got you straight.

15 The Petitioner, Lake Ozark-Osage Beach Joint Sewer
16 Board, is present by its attorney, Steven Mauer and --

17 MR. MAUER: Mayor Penny Lyons from the City
18 of Osage Beach.

19 HEARING OFFICER TICHENOR: And Mayor, you
20 are here in your capacity relating to the Sewer Board
21 as opposed to the City of Osage Beach?

22 MAYOR LYONS: I'm currently Chairman of the
23 Joint Sewer Board.

24 HEARING OFFICER TICHENOR: At this time I
25 need to identify as far as the individual Petitioners

1 in this case. You were asked to sign in as you came
2 in. And what I wish to do at this time is; I'm going
3 to call the names of the Petitioners in this action.
4 When I call your name, if you will stand where you
5 are, I want to determine whether or not you are
6 represented by counsel.

7 And so, first, I'm going to ask is there an
8 attorney here on behalf of any of the Petitioners that
9 wish to be recognized?

10 MR. McGOVERN: Yes. My name is Brian
11 McGovern with the firm of McCarthy Leonard in St.
12 Louis, Missouri. At this point we are representing
13 Larry and Vicky Stockman and Michael and Jacqueline
14 Attkisson.

15 HEARING OFFICER TICHENOR: And they are
16 present in person?

17 MR. McGOVERN: Attkisson is, yes, and the
18 Stockmans are not.

19 We are also representing the Concerned Citizens of
20 Miller and Camden Counties, which is an issue I want
21 to address as we start going through some of the
22 pre-hearing issues.

23 HEARING OFFICER TICHENOR: Do you have a
24 card?

25 MR. McGOVERN: I don't know if I do, but I

1 will get you my contact information.

2 HEARING OFFICER TICHENOR: If you will,
3 Mr. McGovern.

4 Is there any other counsel present who is
5 representing individual Petitioners?

6 Donald Baker, are you present?

7 Joseph Bax?

8 MR. BAX: Yes.

9 HEARING OFFICER TICHENOR: Would you stand,
10 sir?

11 Are you going to proceed in this matter pro se,
12 that is without representation of counsel?

13 MR. BAX: Yes, sir.

14 HEARING OFFICER TICHENOR: Mr. Bax is
15 appearing pro se.

16 Steve and/or Teresa Beeny, are you present? Steve
17 and/or Teresa Beeny?

18 Dennis Croxton and Linda Croxton, are you present?

19 Mary Denton, would you please stand? Are you
20 going to proceed pro se, or are you going to be
21 represented by counsel?

22 MS. DENTON: Pro se at this point.

23 HEARING OFFICER TICHENOR: Jack and/or
24 Barbara Farris, are you present?

25 I will apologize in advance; Mr. Franzeskos?

1 MR. FRANZESKOS: Yes.

2 HEARING OFFICER TICHENOR: Are you going to
3 appear pro se or be represented by counsel?

4 MR. FRANZESKOS: Pro se.

5 HEARING OFFICER TICHENOR: Thank you, sir.

6 Mayor Lyons, you are here in your capacity as
7 Chairman of the Joint Sewer Board and not as and
8 individual?

9 MAYOR LYONS: Yes, sir.

10 HEARING OFFICER TICHENOR: You are by
11 counsel, thank you.

12 Joyce Mace?

13 MS. MACE: Yes.

14 HEARING OFFICER TICHENOR: Are you going to
15 proceed pro so or be represented by counsel?

16 MS. MACE: Pro se.

17 HEARING OFFICER TICHENOR: Thank you. You
18 may be seated.

19 Kevin and/or Judith Meyer, are you going to be pro
20 se or be represented by counsel?

21 MR. MEYER: Pro se.

22 HEARING OFFICER TICHENOR: Mr. and
23 Mrs. William Moore, are either one of you present?

24 Todd and/or Rebecca Reinecke, are you present?

25 Todd or Rebecca Reinecke?

1 Clinton Sheppard? Please stand. Your wife is
2 Tamira?

3 MR. SHEPPARD: Yes.

4 HEARING OFFICER TICHENOR: She is not
5 present?

6 MR. SHEPPARD: No.

7 HEARING OFFICER TICHENOR: Are you going to
8 appear pro se or be represented by counsel?

9 MR. SHEPPARD: Pro se.

10 HEARING OFFICER TICHENOR: Thank you, you
11 may be seated.

12 The Stockmans appear by counsel.

13 Judy Taylor, would you please stand? Are you
14 going to appear pro se or be represented by counsel?

15 MS. TAYLOR: Pro se.

16 HEARING OFFICER TICHENOR: Steve Terviel?
17 Steve Terviel, are you present?

18 Jerry Vincent?

19 MR. VINCENT: Yes.

20 HEARING OFFICER TICHENOR: Mr. Vincent, are
21 you going to appear pro se or be represented by
22 counsel?

23 MR. VINCENT: Pro se.

24 HEARING OFFICER TICHENOR: Thank you, sir.

25 Linda Weeks? Linda Weeks, are you present?

1 John Williams? John Williams, are you present?

2 Carl Williams?

3 MR. WILLIAMS: Pro se.

4 HEARING OFFICER TICHENOR: And you are Carl
5 Williams; correct?

6 MR. WILLIAMS: Right.

7 HEARING OFFICER TICHENOR: Thank you, sir.

8 I will apologize in advance; Zawislak. How close
9 did I come?

10 MR. ZAWISLAK: Zawislak.

11 HEARING OFFICER TICHENOR: Didn't even get
12 in the ballpark. Andrew -- I'm going to go by first
13 names.

14 Andrew, are you going to appear pro se or by
15 counsel?

16 MR. ZAWISLAK: Pro se.

17 HEARING OFFICER TICHENOR: John M., will
18 you please stand? Pro se or by counsel?

19 MR. ZAWISLAK: Pro se.

20 HEARING OFFICER TICHENOR: Thank you, sir.
21 Marline, pro se?

22 MS. ZAWISLAK: Pro se.

23 HEARING OFFICER TICHENOR: Robert?

24 MR. ZAWISLAK: Pro se.

25 HEARING OFFICER TICHENOR: Thank you, sir.

1 We now turn to the nature of the evidentiary
2 hearing. The evidentiary hearing is a contested case.
3 It is in the nature of a judicial proceeding. It will
4 be of record, there will be a court reporter just as
5 in a court trial. The witnesses will be sworn in,
6 they will be allowed to testify, present documentary
7 evidence and be subject to cross-examination. The
8 hearing will be held before me as the appointed
9 Hearing Officer for the Land Reclamation Commission.

10 After the evidentiary hearing I will prepare a
11 proposed decision with findings of fact and
12 conclusions of law. The Commission will then review
13 that proposed decision and adopt and issue it as
14 written, or the Commission may alter it in any fashion
15 it deems necessary before issuing its final order in
16 the matter.

17 So, I want you to understand the process. I will
18 hear the case, I will prepare a decision. But it is
19 only a proposed decision and order. The Commission
20 has the final say on the matter based upon the
21 evidentiary hearing which I will conduct.

22 Burdens of proof for the evidentiary hearing:
23 Applicant; it is the position of the Hearing Officer
24 that, on the issue of meeting the statutory
25 requirements for issuance of the permit in this case,

1 the Applicant has the burden of proof.

2 The applicant has no burden of proof to establish
3 that the permitted activity -- operation of a
4 limestone mine site, a quarry -- does not impact upon
5 health, safety or livelihood of any individual or
6 entity. The Applicant may offer rebuttal evidence on
7 any issues of fact raised by any Petitioner.

8 Respondent; it is the position of the Hearing
9 Officer that there is no statutory provision dictating
10 the burden of proof on the Respondent in this
11 proceeding. However, for purposes of ensuring a
12 complete record in the evidentiary hearing in the
13 event of appeal beyond the Commission, the Respondent
14 should be prepared at the evidentiary hearing to
15 establish that the Commission staff fulfill the
16 necessary statutory and regulatory requirements on the
17 agency for the issuance of the permits sought by
18 Magruder Limestone Company.

19 Like the Applicant, the Respondent has no burden
20 of proof to establish that the permitted activity --
21 the operation of the quarry -- does not impact upon
22 the health, safety or livelihood of any individual or
23 entity. Respondent may offer rebuttal evidence on any
24 issues of fact raised by any Petitioner.

25 The Petitioners; it is the position of the Hearing

1 Officer that each of the Petitioners individually bear
2 the burden of establishing an issue of fact regarding
3 the impact that the permitted activity -- the
4 operation of the quarry -- would have on the
5 individual Petitioner's health, safety or livelihood.
6 This burden of proof must be met by competent and
7 substantial scientific evidence to be introduced at
8 the evidentiary hearing.

9 Competent evidence is evidence that is admissible,
10 that is relevant to an issue in the given proceeding.
11 Substantial evidence is evidence that a reasonable
12 mind would accept as adequate to support a conclusion.
13 It is evidence beyond a scintilla. Substantial
14 evidence is evidence that, if true, has probative
15 force on the issues and from which the trier of fact
16 can reasonably decide a case.

17 Scientific evidence encompasses, but is not
18 limited to, opinions of an expert based upon facts or
19 data of a type reasonably relied upon by experts in
20 the field in forming opinions or inferences upon the
21 subject, and must otherwise be reliable. Scientific
22 evidence may also include the facts or data underlying
23 recognized studies and the resulting conclusions from
24 such studies.

25 Are there any questions from parties, or from

1 counsel for the parties, on the matters I just
2 covered?

3 The substantive issue in this case, because this
4 case has been brought by the Petitioners -- you
5 understand, the nature of the proceeding is that the
6 Respondent has recommended the issuance of a permit to
7 allow the operation of the quarry by Magruder. The
8 Petitioners have brought this action and are
9 contesting that. And the substantive issue is whether
10 the activity authorized by the recommended mining
11 permit unduly impairs the health, safety or livelihood
12 of the Petitioners.

13 So, individual Petitioners -- as well as the
14 entity, the Joint Sewer Board, that is a Petitioner in
15 this action -- you need to focus upon that substantive
16 issue.

17 So, individual Petitioners, you are going to be
18 looking at and focusing on presenting evidence which
19 addresses the issue of how the operation of the quarry
20 would impair your health, safety or livelihood.

21 The Applicant has raised -- in correspondence to
22 the Hearing Officer -- collateral issue. This is
23 where the matters relating to the sewer plant
24 easement, noise pollution, traffic, dust outside the
25 mining site, blasting activities, property

1 devaluation, and quarry impact on surrounding
2 businesses can be considered.

3 The Hearing Officer has determined -- and I'll
4 allow counsel to speak to this in a moment -- the
5 Hearing Officer has determined that this is best
6 addressed by having counsel file briefs relative to
7 the collateral issue which has been raised.

8 At this time, do any of the counsel --
9 Mr. Troutwine, do you wish to address that in more
10 detail?

11 MR. TROUTWINE: I guess just to say that to
12 have standing for the public hearing --

13 HEARING OFFICER TICHENOR: Is the
14 microphone on? It's on now.

15 I want the Petitioners who are in the audience to
16 be able to hear you.

17 MR. TROUTWINE: To originally have been
18 granted standing to have the public hearing, the
19 Petitioners were to address matters that affected
20 their health, safety and livelihood. Director Coen
21 outlined some of those issues in a memo that he issued
22 back in July.

23 And the State Code of Regulations says that, to be
24 considered for standing, those matters must be within
25 laws and regulations affecting the environment that

1 are regulated by the Land Reclamation Commission and
2 the Department of Natural Resources.

3 As such, it excluded those matters that were
4 referenced by you from my correspondence. And
5 therefore, I believe that those matters should be
6 excluded from the hearing as such.

7 HEARING OFFICER TICHENOR: I probably
8 should have advised, both counsel as well as the
9 individual Petitioners earlier, that documentation
10 which was submitted to the Land Reclamation
11 Commission -- that entire file -- Mr. Coen has
12 provided that to me.

13 I have read the entire file. There were a series
14 of formal letters protesting the granting of the
15 permit, there was a packet of information prepared by
16 the Joint Sewer Board, a bound volume. Rest assured,
17 I've read all of that, and so I am very much familiar
18 with all the material. I should have let you know
19 that in advance. I don't want you to think I am
20 operating in a total vacuum on this.

21 In addition, when the matter was presented before
22 the Land Reclamation Commission, I don't know that I
23 was privileged to hear everything that was
24 presented -- I arrived just after the lunch break
25 because I was to report to the Land Reclamation

1 Commission on another case in which I had rendered a
2 decision -- and so I heard virtually all of the
3 presentation. Well, I did, I heard all of the
4 presentation in the afternoon on the matters. So, I
5 don't want the individual Petitioners, nor counsel, to
6 think I'm operating in the dark on this. I'm quite
7 familiar with the issues that have been raised.

8 Mr. Troutwine, I appreciate what you are saying,
9 and I am familiar with -- and I understand -- the
10 position taken by the director on this.

11 At the same time, I know that some of those
12 factors that you have addressed -- not withstanding
13 the regulations -- that there are going to be
14 individual Petitioners who want to address those
15 issues.

16 Working under the assumption that, because of the
17 nature of this issue to this community, that it may
18 very well not be settled at the Commission level, but
19 it may go beyond that to Circuit Court level or
20 beyond, I want to have as full a record as possible on
21 this. And that is why, as I indicated to you moments
22 ago, I really would prefer having a brief on this.

23 And what I will do is start setting a briefing
24 schedule on that, and we will proceed from there. I
25 want, within my record, that brief. I want the

1 benefit of counsel's arguments on it rather than
2 myself simply going and digging into the rules and
3 regulations of the statutes and not giving you the
4 benefit to brief that into argument.

5 And so, I will issue a briefing schedule on that,
6 since it's your issue that you raised. I'm going to
7 allow you to present a brief. I will allow other
8 counsel a responsive brief, and then we'll allow you
9 to present a reply. And we can talk about the
10 timeline on that later.

11 Anything further on that before we move on?

12 Discovery issues, let's talk about witness lists
13 first.

14 Each party shall file with the Hearing Officer and
15 serve upon each opposing party, or opposing party's
16 attorney, on or before December 21st -- that's not set
17 in stone, I want to find out from counsel how many
18 problems that may raise -- on or before December 21st
19 a list of all witnesses that the party expects to call
20 to testify at the evidentiary hearing.

21 Petitioners, you are not required to serve the
22 witness list on other Petitioners. Applicant and
23 Respondent must serve their witness list on all
24 Petitioners, or counsel for Petitioners, that have
25 been represented here.

1 I realize that's a burden upon Respondent and
2 Applicant. However, I don't know of any other way to
3 handle it when we have got 32 or three different named
4 individuals as Petitioners.

5 Each perspective witness -- Petitioner's, listen,
6 I'm going to talk with you individually on this in a
7 little more detail. Each perspective witness shall be
8 identified by name, occupation and qualifications to
9 testify, and a brief statement as to the nature of the
10 testimony the witness is expected to offer.

11 The list shall include, for each person who will
12 be called to testify as an expert witness, the
13 expert's name, address, occupation, place of
14 employment and curriculum vitae giving the
15 qualifications of the expert to give an opinion, the
16 general nature of the subject matter on which the
17 expert is expected to testify and the expert's hourly
18 deposition fee.

19 Counsel, you will recognize that as straight out
20 of the Missouri Rules of Court.

21 So, we are going to do the discovery for you. You
22 don't have to submit on that, you are going to provide
23 it for counsel. And as I said earlier, I will be
24 issuing, after the Thanksgiving holiday, a full order
25 covering these matters.

1 Exhibits and exhibits lists: Each party shall
2 file with the Hearing Officer the original of all
3 exhibits to be offered into evidence, with an exhibit
4 list, and serve upon opposing parties, or opposing
5 party's attorney, a copy of the exhibits and exhibit
6 lists. These shall be served on a date that we will
7 agree to later in this proceeding.

8 Exhibits shall be on eight-and-a-half by 11-inch
9 paper. However, larger documents such as aerial
10 photos, plats, topographical maps, charts, graphs,
11 etc., will be permitted for demonstration purposes but
12 should be reduced to the eight-and-a-half by 11-inches
13 if practical.

14 Service of the witness lists may be made by
15 attaching the list to an e-mail transmission as a Word
16 or PDF document in lieu of mailing by U.S. Postal
17 Service or private carrier service. The Hearing
18 Officer will transmit to all parties providing an
19 e-mail address a list of e-mail addresses.

20 As I look here I don't see that we have a whole
21 lot. It looks like it's essentially counsel and maybe
22 a couple Petitioner's. So, it may be that I will
23 communicate with counsel by e-mail -- electronic
24 transmission -- and I'll simply have to communicate
25 with the rest of the Petitioners by good old-fashioned

1 U.S. Postal Service.

2 Let me stop a moment here and say that I am
3 concerned about imposing upon the Respondent, and upon
4 the Applicant, the burden of presenting to each
5 Petitioner the exhibits.

6 I have no problem with presenting it to counsel
7 for the Joint Sewer Board and counsel for both the
8 Petitioners represented by counsel, but the burden of
9 producing 25 or 30 different documents for every
10 exhibit that both Respondent and/or Applicant may wish
11 to enter into evidence provides me with no small
12 amount of concern.

13 I am wondering if -- since I have Her Honor
14 here -- if the exhibits that are to be filed in this
15 action would be -- if the exhibits in which the
16 Respondent and which the Applicant will be offering
17 would be provided so that they could be available here
18 at the City Hall. They can't be checked out, they
19 can't be taken away, but they would be here so that
20 individual Petitioners could have access to them. Is
21 that something that is workable?

22 MAYOR LYONS: We would be happy to have
23 them in the City Clerk's office, and people could come
24 in and sit and read them and have them available.

25 MR. McGOVERN: As another suggestion; after

1 the meeting tonight I am going to meet with some of
2 the Petitioners in this case, we may suggest that we
3 substitute some of the individual Petitioners as a
4 Concerned Citizens group just to limit the amount of
5 copies of correspondence that would have to take
6 place, and try to centralize, at least communications,
7 on behalf of the Petitioners.

8 So, we will be letting you know what that list may
9 entail as early as next week.

10 HEARING OFFICER TICHENOR: Within the
11 context of that, Mr. McGovern, you understand that, I
12 don't care how you want to characterize this group,
13 the Petitioners are set.

14 MR. MCGOVERN: I understand.

15 HEARING OFFICER TICHENOR: You cannot add
16 anymore people to that group. And if you want to
17 characterize it as your group of clients are going to
18 be "concerned citizens" so that that eliminates part
19 of that issue, then that's fine.

20 I can neither advise a Petitioner for or against
21 having you represent them, but I welcome the
22 possibility that some of the Petitioners would want to
23 utilize you as counsel so that we have them
24 represented by counsel in the proceeding.

25 But I want to caution you that it's only the

1 Petitioners who were served and who are listed in the
2 service. Which, of course, I don't believe you --

3 MR. McGOVERN: I do have them.

4 HEARING OFFICER TICHENOR: You do have
5 them. From your clients?

6 MR. McGOVERN: Yes, sir.

7 HEARING OFFICER TICHENOR: So, that is
8 another possibility, and we'll see how that goes, and
9 you can so advise me.

10 For the Respondent and for the Applicant then,
11 depending upon what happens regarding Mr. McGovern's
12 clients, you would be serving, then, the attorney for
13 the Joint Sewer Board and providing one other copy,
14 which will be placed in the City Clerk's office, as
15 far as the exhibits, and with that the exhibit list
16 and the witness list.

17 Let me inquire concerning expert witnesses so we
18 can address that issue.

19 Mr. Troutwine, is it your intention that you are
20 going to -- on behalf of your client -- have expert
21 testimony?

22 MR. TROUTWINE: Yes, sir.

23 HEARING OFFICER TICHENOR: How many expert
24 witnesses do you anticipate calling?

25 MR. TROUTWINE: At least three maybe four.

1 HEARING OFFICER TICHENOR: At least three,
2 all right. I assume those experts -- well, maybe I
3 shouldn't assume that.

4 Do you anticipate the experts will be preparing a
5 written report that you will be offering as an exhibit
6 in the proceedings?

7 MR. TROUTWINE: Yes.

8 HEARING OFFICER TICHENOR: Mr. Duggan, I
9 don't anticipate -- do you anticipate calling expert
10 witnesses in this matter?

11 MR. DUGGAN: No, I do not.

12 HEARING OFFICER TICHENOR: Essentially, I'm
13 going to take this opportunity -- we maybe can
14 dispense with what I need from you very quickly.

15 Essentially, your witnesses will consist of your
16 client and any other staff members who assisted in the
17 review of the Applicant's application; correct?

18 MR. DUGGAN: That's correct.

19 HEARING OFFICER TICHENOR: All right. And
20 any exhibits that you are going to tender will be
21 exhibits relating to that? No special reports or
22 anything like that from --

23 MR. DUGGAN: It's the public record.

24 HEARING OFFICER TICHENOR: All right. I
25 assumed that it was from previous proceedings we've

1 been involved with.

2 I assume, also, Mr. Mauer, I assume that you will
3 be tendering expert testimony also?

4 MR. MAUER: Yes, sir.

5 HEARING OFFICER TICHENOR: How many experts
6 do you anticipate calling?

7 MR. MAUER: Most likely two but possibly
8 three.

9 HEARING OFFICER TICHENOR: Is it a safe
10 assumption that they will be preparing a report that
11 you will be offering as an exhibit?

12 MR. MAUER: That depends on what kind of
13 reports we get from the Applicant. But assuming that
14 there are written reports that we received, yes, we
15 will prepare a written response.

16 HEARING OFFICER TICHENOR: Mr. McGovern, at
17 this point, do you have any idea as to whether you are
18 going to be calling expert witnesses?

19 MR. MCGOVERN: At this point it's difficult
20 until we are able to conduct some discovery and see
21 what kind of reports we get from the Applicant.

22 Gauging on the last time I went through one of
23 these hearings under 444, we had five to six expert
24 witnesses.

25 HEARING OFFICER TICHENOR: All right, very

1 good.

2 Site visit: I'm assuming that these experts are
3 going to want to visit the site. As well as, I
4 assume, they are going to want to visit the sewer
5 facility.

6 And let me just put it this way; I expect full
7 cooperation from all the parties regarding this. I
8 want the Applicant and I want the Joint Sewer Board to
9 make available to opposing experts for inspection
10 those facilities. I don't want to have to convene any
11 further hearings to deal with discovery issues. And
12 so, when you are going to be conducting your
13 discovery, don't get out the fly rod and the waders, I
14 don't appreciate it.

15 All of you gentleman who have served as counsel
16 have conducted a great deal of discovery, I'm sure,
17 and I realize that there is an aspect of discovery in
18 which we go out there and try to get everything
19 possible.

20 The issues in this are fairly clear, and I don't
21 want to have to be dealing with a bunch of requests
22 for production of documents and objections and dealing
23 with whether or not "well, no, this really isn't
24 relevant but it might lead to something down there
25 somewhere."

1 I want a clear tie. I want it shown on its face
2 what the documents are that are being requested, what
3 the discovery is that you are seeking to do, it makes
4 a natural connection to something that is most likely
5 admissible into evidence and should be admitted into
6 evidence. So, I trust that covers it.

7 How soon do we think we can get discovery
8 concluded?

9 MR. MAUER: We have talked a little bit,
10 Mr. McGovern and I, and we think we could have
11 discovery done in approximately four to five months.

12 HEARING OFFICER TICHENOR: Four to
13 five months?

14 MR. MAUER: Yes, sir. By the time we get
15 reports from their experts, we have an opportunity for
16 discovery from the Applicant on how they plan to go
17 about their mining, we have --

18 Their proposal thus far doesn't give any detail on
19 the number of crushers, the number of trucks, the
20 speed of operation, when they are going -- there are
21 many details that are obviously going to impact how we
22 would respond and what our experts need to consider.

23 So, we are going to have to get all that first,
24 and their expert reports, before we can formulate our
25 response.

1 MR. TROUTWINE: I'd like to say that we
2 will be able to complete discovery, I'd say, by the --
3 we were shooting for a hearing date of mid-January so
4 we were looking at completing discovery at the end of
5 December at the latest, and would be able to provide
6 information that they would need to complete their
7 discovery -- our experts have been retained and --

8 HEARING OFFICER TICHENOR: How soon do you
9 think you are going to have your expert reports to
10 provide to opposing counsel?

11 MR. TROUTWINE: By mid-December, I'd say,
12 three weeks tops. Some important things -- when you
13 were talking about the site visit and the
14 accessibility of site visits -- a lot of what our
15 experts will testify to, and our report will be based
16 on, are the sewer plant specs -- for lack of a better
17 word -- and the information regarding the lines
18 running to and from the sewer plants.

19 So, the sooner we get that information, the sooner
20 our experts can compile reports and opinions, and
21 we'll move discovery very fast.

22 HEARING OFFICER TICHENOR: Mr. McGovern?

23 MR. MCGOVERN: In all fairness, the
24 Applicant has been looking at this project for many
25 months, if not several years. In terms of preparatory

1 work there at the mining site, there probably is a
2 bunch of discovery that has to take place.

3 From the standpoint of the Petitioners I
4 represent, we are going to have to determine what type
5 of operation is intended, how many ignition points,
6 conveyors, crushers, where the long term mine plan
7 intends to go. There's a lot of information that we
8 are going to have to find before the experts can even
9 compile reports.

10 HEARING OFFICER TICHENOR: What do you mean
11 by long-term mine plan?

12 MR. McGOVERN: Where this mine is going to
13 go. They are going to start at a point, are they
14 going to start above ground or going to start below
15 ground? It's going to move in a progression
16 throughout the acreage that they've intended to
17 purchase out there. So, there's going to be issues
18 that may affect different Petitioners different ways.

19 There's also the issue of looking at prior
20 noncompliance -- because we are looking at a brand new
21 site -- to determine whether or not there's a
22 propensity for violations or a likelihood for
23 violations respectively.

24 It discusses the time necessary to uncover all
25 that information. To suggest that we can do

1 discovery --

2 HEARING OFFICER TICHENOR: I don't recall
3 coming across, within the file presented to me,
4 assertions relative to noncompliance that were raised
5 before the Commission in granting the formal public
6 hearing.

7 MR. McGOVERN: And I haven't seen the full
8 file. I'm simply looking at the guidelines. And the
9 case law dictates that you can look at it.

10 HEARING OFFICER TICHENOR: I'm well aware
11 of the statute, but I'm not sure when the issues --
12 it's been a couple weeks since I read it, and I've
13 been doing a lot of Tax Commission work since then.

14 What I understand, Mr. Troutwine, you are saying
15 that you can provide, as far as the -- I'm going to
16 call it mine specifications -- that you can present
17 that by mid-December to Mr. McGovern and Mr. Mauer?

18 MR. TROUTWINE: Correct. And I could have
19 an expert witness list and most likely an exhibit list
20 by that time as well.

21 MR. McGOVERN: In all due respect, we will
22 send requests for production, we will do that promptly
23 per your schedule, and he will have 30 days to
24 respond. The Rules of Civil Procedure don't apply to
25 this.

1 By the time we get that information and we get
2 their expert disclosures -- we will request that we
3 have the disclosure of experts, they'll disclose first
4 and we will then disclose second -- we're already
5 close to three months out.

6 HEARING OFFICER TICHENOR: No, I didn't
7 make myself clear. We're going to disclose experts,
8 we're not going to go back and forth; you show me your
9 hand and I'll show you mine.

10 The issue -- I don't understand what the big
11 problem is on understanding what the issue is
12 concerning operating this quarry and what the
13 potential impact is, especially as far as the Joint
14 Sewer Board is concerned.

15 I understand that once you see one expert report
16 there may be something that you are going to want to
17 prepare in response to that.

18 MR. McGOVERN: Right.

19 HEARING OFFICER TICHENOR: But as far as
20 identifying what the experts are, as far as the
21 witness list, why is December 21st not a doable date?

22 MR. McGOVERN: I'm not suggesting it's not
23 a doable date. If you are suggesting that we all
24 disclose at the same time and then there will be a
25 period for rebuttal, I don't have an objection to

1 that. I think that is what Mr. Mauer was
2 contemplating as well.

3 There has to be at least some chance for rebuttal.
4 And practically speaking, that's going to put us into
5 February/March.

6 HEARING OFFICER TICHENOR: I am not
7 contemplating that we are going to take four to five
8 months to complete discovery on this.

9 MR. MAUER: I have already attempted to
10 engage at least two experts. I believe that I could,
11 by the 21st -- I may have names, but I certainly will
12 not have the information they'll need before I can be
13 even sure that they can render the opinion for the
14 testimony that might be pertinent to this proceeding.

15 But also, because I won't have it by then -- I
16 won't even have it until mid-December. So, I can tell
17 you who I think we are going to use, but beyond that,
18 by the time I get it to them, if I don't get it until
19 the middle of December, realistically, we all know
20 they are not going to look at it until after the first
21 of January, so I'm not going to get a report then
22 until -- even if they only have three to four weeks
23 you are looking at the end of January before we have
24 gotten a report.

25 And at that same time I am going to have to depose

1 their experts and get that information to my expert.
2 So, you are looking at February -- realistically, the
3 middle to the end of February before we are going to
4 have a report and they are going to have an
5 opportunity to depose our folks.

6 HEARING OFFICER TICHENOR: Now, that seems
7 realistic to me, sir.

8 MR. MAUER: So then, we are looking at
9 November, December, January, February, that's four
10 months. If we complete everything by the end of March
11 that would be the four to five months that we are
12 talking about.

13 HEARING OFFICER TICHENOR: We're right at
14 the end of November here. I guess I count on my
15 calendar different. The end of February is
16 three months --

17 MR. MAUER: Than I only need four months,
18 Your Honor. I take back the fifth.

19 MR. TROUTWINE: In this matter, the experts
20 are all going to be basing their opinions on the same
21 information -- which we are willing to provide -- in
22 terms of mine activity, long-term mine plan,
23 excavation tactics.

24 And the sewer plant already has all the
25 specifications and the layout, I guess, of the sewer

1 plant, so the experts can get their opinions
2 therefrom.

3 I don't see, I guess -- I mean, I realize some
4 exchange needs to go back and forth, but I don't see
5 the need for a three-month exchange.

6 HEARING OFFICER TICHENOR: All right,
7 Counsel, you all are going to have to hammer this out.
8 All right? I'm going to give you an opportunity to do
9 it.

10 I do not want to unreasonably delay this matter.
11 I want it to move. At the same time, I want all
12 parties to have a full and fair opportunity to pull
13 together their direct case and to present that case
14 based upon the best information, data, that we can get
15 from all the experts.

16 So, don't think in any way that I don't want --
17 because I do want -- I want the best information from
18 the experts in this record. I simply do not want to
19 delay and drag this out.

20 And so, Counsel, what I am going to do is, I'm
21 going to -- I still want you, tentatively, December
22 21st, I still want you to exchange and provide those
23 experts. It's not locked in concrete, but I want to
24 move you along in that regard so that we are more or
25 less committed to that.

1 And I will certainly entertain, from any of the
2 attorneys who are going to be presenting experts, your
3 request for leave to add to within a reasonable time.
4 Once we've got the essential discovery matters
5 exchanged, as far as the long-term mine plan and all
6 of that sort of information, as well as the
7 information concerning the sewer plant, then from
8 there it ought to be able to be moved along.

9 I want you to encourage whoever the experts are
10 that you are getting that this needs to be moved
11 along. I realize they have other obligations and
12 other matters to address.

13 Let me talk to the individual Petitioners --
14 anything else relative to discovery? What I am going
15 to do is -- and I'll put this in the order which will
16 come out after Thanksgiving, the week after -- I still
17 want you to make the December 21st deadline as far as
18 the expert witness lists. I want you to report to me
19 by then a proposed -- hopefully agreed to -- discovery
20 schedule.

21 And if you can't work it out then I'm going to set
22 the discovery schedule. And I think you are better
23 off for you all to work it out then you are for me to
24 set it. I'll probably make everybody mad if I do.

25 That really doesn't concern me, gentlemen. What

1 concerns me is that we do this in an expeditious
2 manner. So, I understand you are adversaries but
3 let's work together on this.

4 Let me talk to the individual Petitioners a
5 moment. Listen up. What you just heard is a
6 discussion concerning conducting discovery.
7 Conducting discovery consists of a variety of things
8 that have evolved in our judicial process; submission
9 of interrogatories, request for production of
10 documents. These are things that these attorneys deal
11 with all the time. These are things that attorneys
12 get paid a great deal of money for in crafting and
13 serving on opposing parties, and we have all sorts of
14 battles in court systems, at the State Tax Commission
15 where I preside, on discovery battles.

16 I am not in any way demeaning the intelligence of
17 any Petitioner in this room, understand that. But
18 people, although you have the right as a Petitioner to
19 conduct discovery, you simply are going to be in over
20 your head, and I strongly caution you against it. If
21 you are not represented by counsel I can't tell you
22 how to do it.

23 I am going to order that any pro se Petitioner, if
24 you wish to seek discovery on the opposing parties,
25 the opposing parties having been the Respondent and

1 the Applicant, if you wish to seek discovery you are
2 going to have to submit it to me. I'm not going to go
3 through having counsel for the Respondent or counsel
4 for the Applicant file their objections and file their
5 motions to strike your discovery and then have to deal
6 with that. I'm going to be the one who ultimately has
7 to decide. I strongly caution you against it.

8 I don't think there's anything that you are going
9 to gain that isn't going to be brought out by either
10 counsel for the Joint Sewer Board or counsel for the
11 Petitioners who have retained counsel. I think that
12 they will, in their discovery, address all of the
13 relevant issues that need to come before this hearing
14 when we conduct the evidentiary hearing.

15 Having said that, when you get the order it will
16 specify that, if you, as an individual pro se
17 Petitioner, wish to conduct discovery, that you must
18 submit it to me for review and I will determine
19 whether or not it is appropriate discovery to be
20 conducted, and if so I will forward it to the opposing
21 party on which you wish to serve discovery.

22 I just simply, strongly counsel you against that.
23 What you need to do as an individual Petitioner is
24 look at your issue in this appeal and be prepared to
25 present your evidence in the evidentiary hearing on

1 that. And we are going to address that a little
2 further in a moment.

3 We need to talk about a timeline then for the
4 evidentiary hearing, and I would assume that we are
5 talking about getting into April or May. I'd like
6 March or April better, but I'm afraid that April or
7 May is when we are going to get to it.

8 I'm not going to try to set a date now for us. I
9 simply -- I realize we are going to have to address
10 this discovery. I want you to do it as expeditiously
11 as possible. I will be wanting reports so that I can
12 make a determination that we are finished and you are
13 ready to go to trial.

14 Having said that, I want to know if you have some
15 idea -- and I realize, Mr. McGovern, this is probably
16 more difficult for you to try and give me an
17 estimate -- but I want to look at an estimate of time
18 for trying this matter, because we're not going to do
19 this in one afternoon, as I think counsel knows.

20 Mr. Troutwine, do you have just an estimate on how
21 long -- and when I say your direct case, I mean
22 presenting your witnesses, not worrying about how much
23 time cross-examination may take -- but do you have an
24 estimate on the time that it would take you to present
25 the witnesses that you expect to call for your direct

1 case?

2 MR. TROUTWINE: Probably two to three hours
3 tops. We envision that this could be done in a day,
4 but we could have been underestimating that.

5 HEARING OFFICER TICHENOR: You didn't look
6 at that list of your Petitioners, did you, Counsel?

7 MR. TROUTWINE: I guess not close enough.

8 MR. DUGGAN: I would be surprised if we did
9 it in much less than a week, maybe four days,
10 optimistically. But that's the entire case.

11 OFFICER TICHENOR: And I was going to tell
12 you that you are going to present your direct case in
13 less than -- just your case.

14 MR. DUGGAN: My part of it will take
15 two hours or more depending on cross-examination.

16 HEARING OFFICER TICHENOR: Okay.
17 Mr. McGovern, can you give me any idea?

18 MR. MCGOVERN: I think I can, because I
19 think we are going to be able group the issues down
20 based upon Petitioners that are still involved in the
21 case and that would be a day and a half to two days
22 including expert testimony.

23 HEARING OFFICER TICHENOR: One to two
24 including your experts?

25 MR. MCGOVERN: Yes, sir.

1 HEARING OFFICER TICHENOR: You are going to
2 make me very happy.

3 MR. McGOVERN: Leaning toward two days
4 depending on how we narrow the issues down.

5 HEARING OFFICER TICHENOR: So, we are
6 looking -- Joint Sewer Board, how long are you going
7 to take, Counsel?

8 MR. MAUER: If Mr. McGovern is only
9 estimating a day and a half or two, and Mr. Troutwine
10 is only estimating less than half a day, then I'm
11 assuming I've got at least two days, because there
12 can't be -- I would have thought there would be some
13 overlap. But I've got to believe that there's going
14 to be at least two days for my case in chief.

15 HEARING OFFICER TICHENOR: Mr. Duggan is
16 right, it's probably going to take us a week to try
17 it.

18 We don't know at this point, Mr. McGovern, how
19 many of these Petitioners you may represent and
20 consolidate?

21 MR. McGOVERN: That's correct. I have a
22 meeting with the group after the meeting tonight.
23 Tonight is the first chance we've had to get everyone
24 together in one room.

25 HEARING OFFICER TICHENOR: You are

1 representing four of them now?

2 MR. McGOVERN: Yes, including a husband and
3 wife, two families -- yes.

4 HEARING OFFICER TICHENOR: The Atkissons
5 and the Stockmans?

6 MR. McGOVERN: Correct.

7 HEARING OFFICER TICHENOR: That's fine.
8 For the other individual Petitioner's; just as I gave
9 you instruction on discovery, many of you have
10 indicated you are going to appear pro se. You have
11 that right, and I'm going to ensure that you have that
12 right, I'm going to ensure that you get to tell your
13 story, that you have your day in court.

14 I'm going to suggest you consider -- and we're not
15 making a final determination on this at this point --
16 but I'm going to suggest those of you who are pro se
17 Petitioners, if you do not become part of the
18 Concerned Citizens, and you wish to continue as a pro
19 se Petitioner, that's fine. I'm going to suggest that
20 you consider, for your direct case -- your case in
21 chief -- that you submit it on a written statement of
22 "here is what the issue is to you."

23 Counsel, what I would anticipate doing on that --
24 as I say, I'm not setting this specifically now, I
25 want to wait and see what we have got coming out of

1 your meeting with the Petitioners. If we do that,
2 then what I would anticipate is receiving those ahead
3 of time. I would share those with the attorneys. And
4 for the evidentiary hearing, for the Petitioners' part
5 of the case, I would then allow the Petitioner to
6 come, I would swear them in, I would have them
7 identify their direct testimony. This is what we are
8 dealing with, written direct testimony. I would have
9 them identify that, and if there were any
10 cross-examination then I would permit that
11 cross-examination, or if I had any questions of the
12 witness.

13 And let me say to the individual Petitioners; I'm
14 suggesting this, and I'm leaning very heavily toward
15 it, simply because for us to go through the process of
16 calling each one of you individually -- and without
17 representation I can't be your attorney. I'm going to
18 ask you some basic questions if you testify; state
19 your name, your address, what do you want to say.

20 Unless you have written it out in advance it's not
21 going to be well organized, it's not going to be well
22 presented. Whereas, if we allow you to submit written
23 direct testimony, you can organize your thoughts
24 better, you can address the issues as it pertains to
25 the issues of the hearing before us and the impact

1 which you perceive will be on your livelihood, your
2 health, your safety.

3 So, I share that with you, and I will make a final
4 determination on that. We can just, I'm afraid, spend
5 a whole lot of time having you present oral testimony
6 as opposed to taking the stand, identifying your
7 written direct testimony, and if there are any
8 questions in cross-examination you respond to those,
9 and if not, that concludes your testimony. It's in
10 the record. It's part of the record. You don't have
11 to testify orally in order to get your case into the
12 record.

13 I realize, Counsel, especially for the Applicant,
14 that presents all sorts of issues because it's
15 essentially a testimony in the narrative. Understand,
16 we are not trying this before a jury, and I can
17 recognize, I deal with this -- we operate at the Tax
18 Division under direct testimony in our commercial
19 cases, so this is not a problem as far as my
20 understanding when the party has written out their
21 statement in effect.

22 That does not mean that I will not entertain, if
23 you wish to file any sort of objections to certain
24 portions of it, then we'll make that part of the
25 record also and we can deal with it in that fashion.

1 So, I realize it's a narrative down there in black and
2 white on paper, and a lot of attorneys don't like that
3 and they would rather have the opportunity -- and
4 would have the opportunity -- to cross-examine them,
5 but I think it may be more expeditious to handle it
6 that way.

7 I'll make a determination and we'll arrive at a
8 final conclusion on that.

9 All right. We're definitely looking at a week to
10 have this. Now we come to the procedure for the
11 evidentiary hearing. And the first issue that we are
12 at odds on is where are we going to hold this.

13 Well, let me, first of all, tell you what I
14 envision the order of proceedings will be. The order
15 of proceedings will be that the Applicant will present
16 its case in chief first. The Respondent will present
17 its case in chief. The Petitioners then will present
18 their case in chief.

19 The Joint Sewer Board will be recognized first.
20 Mr. McGovern, you will be recognized to present your
21 Petitioners' case in chief. And we will follow that
22 by any pro se Petitioners presenting their case in
23 chief, most likely, hopefully, as written direct
24 testimony as I have just previously outlined. So,
25 that is going to be the order of proceedings. The

1 Applicant, the Respondent and then the Petitioners.

2 The location of the proceedings -- and I have
3 given a great deal of thought to this even prior to
4 communication with two of the counsel.

5 Gentlemen, I clearly recognize that there's a
6 feeling that as far as where the location of this
7 hearing is going to be held has some level of
8 importance. And, ordinarily, I would simply hold this
9 proceeding in Jefferson City because that's where the
10 Land Reclamation Commission is. And in the past we
11 have held it at the Lewis and Clark building, and it's
12 a nice facility, and it could accommodate this crowd.

13 However, in fairness to the individual
14 Petitioners, and I may want to -- depending upon,
15 Mr. McGovern, your conversations and what we have as
16 far as narrowing this list of Petitioners down -- I
17 may want to reconsider this. But my intention was to
18 have the presentation of the Applicant and
19 Respondent's case in Jefferson City.

20 I realize, then, that means any of the Petitioners
21 who want to take part in that, that are not
22 represented by counsel, you have to come to Jefferson
23 City. I had anticipated that that would probably be,
24 those hearings for the presentation of the Applicant
25 and the Respondent's case in chief, we would most

1 likely do those during week days, during the day,
2 during ordinary operating hours. However, that
3 doesn't mean that we may not continue into the night
4 if necessary, and it may be.

5 As far as the Petitioners' case, I have determined
6 that, so long as the City of Osage Beach will extend
7 to us the hospitality, and so long as this facility,
8 this room, can be utilized, I would hold the
9 Petitioners' direct case here. And we would arrange
10 the room in such a fashion that we could utilize one
11 of the chairs as a witness chair and counsel will have
12 a table to work from. That, of course, is contingent
13 upon being able to get times in which the council is
14 not meeting.

15 It had been my intention, also, that the
16 Petitioners' individual cases, that we would look at
17 trying those on evenings, probably from six until
18 nine. Hopefully we can wrap those up, essentially, in
19 one evening session. If need be, I might consider
20 going to a Saturday hearing if we have to. We'll just
21 work with that.

22 As far as presentation, Ms. Mayor, for the Joint
23 Sewer Board, I don't know that it's necessary that we
24 utilize these facilities. I think we can just as
25 easily present your case in chief in Jefferson City.

1 But I'm open to suggestions on that.

2 Do you wish to speak to that? Is there some
3 compelling reason why you, as counsel for the Joint
4 Sewer Board, cannot as adequately present your case in
5 Jefferson City in the beautiful La Charrette room?

6 MR. MAUER: Yes, Your Honor. Most
7 importantly because many of the witnesses that we are
8 going to present on the factual side are going to be
9 operators and individuals from the City. And we are a
10 small City staff, we would not want to take them away
11 and have to drive them up to Jefferson City, be there,
12 sit and wait to testify, and then drive all the way
13 back. Obviously, if I am taking them away from their
14 duties, if I can do it here it would be much more
15 concise and the City's operations would not nearly be
16 so affected.

17 HEARING OFFICER TICHENOR: How many of
18 those witnesses do you deem that are going to make up
19 your case in chief?

20 MR. MAUER: Probably five or six witnesses.

21 HEARING OFFICER TICHENOR: Mr. Troutwine?

22 MR. TROUTWINE: I speak, I guess, in terms
23 of inconveniencing the City, my clients will have to
24 travel from Troy, Missouri, over 100 miles every time,
25 for the Petitioner's case in chief.

1 Jefferson City is a neutral locale, as you said,
2 where the Department is domiciled, and it seems to be
3 sufficient for the presentation of the Joint Sewer
4 Board's case in chief. City workers, as Mayor Lyons
5 is involved, they can get a pass to sneak up to
6 Jefferson City.

7 HEARING OFFICER TICHENOR: I'm not sure the
8 issue is them getting a pass as it is taking staff
9 people away that may have to sit in Jefferson City all
10 day long and there might not be adequate staff here.

11 I understand the point that Mr. Mauer is making on
12 this. And I really think that splitting venues -- so
13 to speak -- on this is the best we're going to go.
14 And that way we grant leeway to both sides. And
15 that's tentatively where I'm going to go on this, and
16 we'll work out the particulars of it at a later time.

17 As far as the experts that will be presented who
18 are not sitting on boards, I would prefer that we look
19 at Jefferson City. Part of the reason I'm looking at
20 Jefferson City is the tax payers of the state have to
21 pay for my travel and my time. So, it is more
22 expensive to conduct this proceeding coming here than
23 it is for me to conduct it in Jefferson City. So, I
24 want you to understand that's part of my
25 consideration.

1 So, I'm willing to make that accommodation,
2 particularly for the individual Petitioners. And I
3 believe that the fact that, as far as fact testimony
4 from City employees, that warrants holding the hearing
5 here for that. However, for experts who I assume will
6 be coming in from someplace other than Osage Beach or
7 Lake Ozark, I don't think it works an imposition upon
8 the Petitioners to hold the hearing in Jefferson City.

9 I realize that there's individual Petitioners who
10 may want to attend, but that's kind of balanced off by
11 the fact -- as Mr. Troutwine has indicated -- the
12 Applicants in this case have to travel a distance just
13 to Jefferson City. So, tentatively, that's what we
14 are looking at. I'll outline that in detail more.

15 As far as the order for presentation of the
16 party's case in chief, I'm going to vary it slightly
17 in that, when the party presents, I will take the
18 opening statement from the individual attorney at that
19 point in time and not opening statements from all
20 counsel. You'll wait for your direct case to present
21 your opening statement.

22 We will then have the direct testimony and the
23 cross-examination. And the cross-examination will
24 first be conducted by attorneys.

25 Individual Petitioners -- pro se's -- listen up

1 again, please. Cross-examination, you all know what
2 that is. Some of you are old enough to remember Perry
3 Mason, Matlock, Law and Order, we know how to conduct
4 cross-examination, don't we? We have seen it done.

5 People, rest assured, notwithstanding what you
6 see on television, cross-examination, good
7 cross-examination, quality cross-examination is not
8 just asking questions. And here, again, I'm not in
9 any way questioning your intelligence, I'm just
10 telling you, you haven't been trained to conduct good
11 cross-examination.

12 However, you have the right to do so. And so,
13 individual Petitioners, pro se Petitioners not
14 represented by counsel -- those represented by
15 counsel, Mr. McGovern is going to conduct your
16 cross-examination. Because you are represented by
17 counsel, you don't get to ask the questions.

18 If you are a pro se Petitioner, after the
19 attorneys have all had their bite at the witness you
20 will be allowed to conduct cross-examination, you will
21 be allowed to ask questions. I caution you that the
22 attorney who has presented that witness is going to
23 object the first moment that your cross-examination
24 crosses the proper evidentiary lines.

25 And you may not understand why it is that that

1 mean old attorney, Mr. Troutwine or Mr. Duggan, is
2 objecting to your good question. But if it crosses
3 the line for what is proper cross-examination they're
4 going to raise the objection, and I have to rule on it
5 based upon the rules of procedure, the rules of
6 evidence, and you don't get a free pass because you
7 happen to be a pro se litigant.

8 So, I want you to understand, as I have tried to
9 make you understand on discovery and on direct
10 testimony, you have that right, I'm going to ensure
11 you that right. But I caution you, again, as much as
12 you want to ask one of those experts or ask
13 Mr. Magruder why it is he's putting that quarry where
14 he's putting it, as much as you want to ask those
15 questions, a lot of those questions are not going to
16 be relevant and a lot are going to be objected to.

17 So, I'm going to serve your right and allow you to
18 do it if you are a pro se litigant, but you are going
19 to be up against it in the proceeding. And I'm sorry,
20 but that's just the way it is.

21 Following the cross-examination, at the close of
22 all the direct cases, we will then entertain rebuttal
23 evidence. In other words, once Applicant, Respondent
24 and Petitioners have closed their case we then will
25 entertain rebuttal testimony, rebuttal evidence.

1 We will move to closing arguments once that is
2 completed. The Applicant first, Respondent, then
3 Petitioners; Joint Sewer Board, Concerned Citizens --
4 whatever we are going to identify this group -- and
5 then pro se Petitioners. So, that's the general order
6 in which it will be presented.

7 The issue was raised by Mr. Troutwine concerning
8 electronic equipment. And I guess what I would need
9 to know is are you going to be able -- are you
10 requesting that the Commission provide electronic
11 equipment, or are you going to be prepared to have
12 whatever electronic equipment you need for utilization
13 by your witnesses?

14 MR. TROUTWINE: We have the equipment, we
15 just wanted to make sure that wherever the hearing was
16 held that in either location there was access to set
17 that material up for the electronic projectors.

18 HEARING OFFICER TICHENOR: And this would
19 be your case in chief?

20 MR. TROUTWINE: Correct.

21 HEARING OFFICER TICHENOR: There's all
22 sorts of stuff, and I'm not sure -- I say the La
23 Charrette room at Lewis and Clark, it may be the Elm
24 Street building. But any of those have the capability
25 as far as PowerPoint projection screens. I'm assuming

1 that's what we are talking about.

2 MR. TROUTWINE: Yes. I wanted to make
3 sure.

4 HEARING OFFICER TICHENOR: Yes, over there
5 is a screen. So, if in presenting Petitioner's case,
6 Counsel, if you need electronic equipment it's going
7 to be your responsibility to have your equipment set
8 up and be in charge of it. The Commission is not
9 going to be responsible and this Hearing Officer is
10 not going to be responsible.

11 Let me talk a moment about service upon opposing
12 parties. Of course, Counsel, you understand you are
13 going to serve upon opposing counsel.

14 Mr. McGovern, as soon as you have for me -- and I
15 need your contact information -- as soon as you have
16 for me the list of Petitioners that you are going to
17 represent, what I want you to do is file an entry of
18 appearance and serve all counsel.

19 MR. MCGOVERN: Very good.

20 HEARING OFFICER TICHENOR: So that I know
21 here are the individual Petitioners that I can take
22 off my mailing list. As much as Counsel wishes, you
23 have my e-mail address and there's no problem with
24 communicating with me in that fashion, attaching
25 whatever you need to attach in a Word format or PDF

1 format and that's fine. I'm happy to download it and
2 print it as I need it. If you prefer regular mail
3 then that's fine also.

4 I believe that I have covered the items that I
5 wished to cover. I want to ask, first, if the
6 attorneys have any other items that you wish to
7 address that I haven't gone over?

8 MR. MAUER: Nothing here, Your Honor.

9 MR. McGOVERN: Nothing further.

10 MR. DUGGAN: Nothing further.

11 MR. TROUTWINE: Nothing further.

12 HEARING OFFICER TICHENOR: All right.

13 Thank you.

14 Petitioners, it's your time. Individual pro se's,
15 if you have a question about anything that we have
16 discussed that you do not understand, would you come
17 to the microphone at the front -- I believe it is
18 on -- identify yourself and ask what you will, because
19 I want you to understand.

20 I want you to also realize that you are going to
21 receive an order that will memorialize what we have
22 addressed tonight. It's not going -- there are
23 certain items that aren't being set, but in general,
24 what we have addressed.

25 I am going to wait until -- Mr. McGovern, how soon

1 do you think you can -- after the Thanksgiving
2 holiday --

3 MR. McGOVERN: Yes, hopefully by the end of
4 next week.

5 HEARING OFFICER TICHENOR: All right. Then
6 I will get that order out memorializing our hearing
7 tonight once I know as far as the Petitioners that you
8 are going to be representing, because that way I'm not
9 going to be sending out -- again, the State has to
10 reimburse me every time I send that out by mail, so I
11 am going to save a few postage stamps there.

12 Those Petitioners who are not represented by
13 counsel, you will receive an order, and you will
14 receive all the other communication that I happen to
15 issue during the course of the proceedings.

16 So, are there any individual pro se Petitioners
17 who have any questions about the proceeding and what
18 we have gone over tonight? If not, then I appreciate
19 your attendance here.

20 Counsel, I appreciate all your attendance and work
21 on this. I do want you to move forward as quickly as
22 possible, doing so within the constraints of what you
23 know as good practice of law to represent your
24 clients, but I do not want this matter unduly delayed.

25 And with that, the pre-hearing conference is

1 adjourned. We're off the record.

2 (WHEREIN, the recorded portion of the pre-hearing
3 conference was concluded.)

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1 CERTIFICATE OF REPORTER

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3
4 I, Mindy Vislay, Certified Court Reporter with the
5 firm of Midwest Litigation Services, and Notary Public
6 within and for the State of Missouri, do hereby
7 certify that I was personally present at the
8 proceedings had in the above-entitled cause at the
9 time and place previously described; that I then and
10 there took down in Stenotype the proceedings had; and
11 that the foregoing is a full, true and correct
12 transcript of such Stenotype notes so made at such
13 time and place.

14
15
16
17
18 _____
Mindy Vislay, CCR

19 Notary Public (County of Cole)

20 My commission expires March 19, 2011
21
22
23
24
25